

1 AMENDMENT TO DAP OPERATING AGREEMENT BY AND BETWEEN
2 THE CITY OF DURHAM, NORTH CAROLINA AND
3 MiLB MANAGEMENT, LLC
4

5 This contract amendment ("Amendment") is made, dated and entered into as of
6 the 30th day of October, 2009, between the City of Durham ("City") and
7 MiLB MANAGEMENT, LLC, a North Carolina nonprofit subsidiary limited liability
8 company ("Operator"). Terms not defined herein shall have the meaning ascribed to it in
9 the Agreement, as amended. Section references are to sections in the Agreement.

10
11 **BACKGROUND**
12

13 The City and the Operator entered into a contract titled "DAP Operating
14 Agreement by and between the City of Durham, North Carolina and MiLB Management,
15 LLC," dated December 31, 2007. That contract is referred to as the "Original Contract."
16

17 **TERMS AND CONDITIONS**
18

19 The defined terms of the Original Contract shall have the same meaning in this
20 Amendment. The parties agree to amend the Original Contract as follows:
21

22 **1.0** In Section 2.1, title, "**Acceptance Date**" insert at the end of the first sentence
23 following:
24

25 or, if occurring earlier, the date identified and as certified in accordance
26 with the requirements of Section 23.3.1. The Acceptance Date shall be
27 officially documented by the Acceptance Date Certification executed by
28 both Parties in the form of "Exhibit F" attached hereto ("Acceptance Date
29 Certification") and issued in accordance with Section 23.3.1.
30

31 **2.0** At the end of Section 2.13, titled, "**DAP Related Trademarks**" add the following
32 sentence:
33

34 All uses by the City of Durham of DAP Related Trademark(s) developed
35 exclusively by the Operator shall be first approved by the City of Durham
36 Public Affairs Office.
37

38 **3.0** In Section 2.44, titled, "**Prohibited Uses**" delete the entire definition and after the
39 title replace with the following:
40

41 "Prohibited Uses" shall mean events that will cause damage to the DAP
42 playing surface and/or physical structures or events that may unreasonably
43 disturb the neighboring businesses and residents near and around the DAP.
44 Owner and Operator shall cooperate in determining what constitutes a
45 Prohibited Use on a case by case basis; however, either party may
46 individually determine that a particular use is a Prohibited Use.
47

48 **4.0** In Section 7.1.4, titled, "**Other City Sponsored Events**" in the first sentence, delete
49 "ten (10) additional Days for Events" and replace with "five (5) additional Days for non-

baseball related Events.” In the third sentence of the same Section 7.1.4, delete “ten (10)” and replace with “five (5).”

5.0 In Section 7.2, titled, “**Baseball Related City Reserved Events**” in the last sentence insert “paid to Operator” after “established rental fees.”

6.0 In Section 7.2.1, titled, “**City Parks and Recreation Sponsored Baseball League Games (‘Adult and youth Baseball League Games’) – No Facility Rental Fees –**” at the end of the first sentence, delete “Event Days or.” In the third sentence of Section 7.2.1 at line no. 579, delete “Events or.” At the very end of the last sentence of Section 7.2.1 delete “22 days” and replace with “10 Event Blocks with not more than one Event Block per Day and no more than 2 weekend Days (Sunday or Saturday) per calendar month.”

7.0 In Section 7.2.2, titled, “**DSA and American Legion Baseball Games – Agreed to Facility Rental Fees --**” delete the first three sentences in their entirety above the “Facility Rental Fees” table, and replace with the following:

The Operator shall make available the DAP for the baseball games for Durham School of the Arts (DSA) and American Legion baseball games for the Term of this Agreement to be scheduled by the Operator through direct consultation with DSA and American Legion representatives. Operator shall charge the following Facility Rental Fees per 5-hour Event Block and hourly usage of stadium lights for night games. The total number and dates of such Event Blocks shall be established by the Operator prior to the start of a Calendar Year during the development of the Operator Annual Programs List and the City Reserved Events Calendar and shall not exceed 18 Event Blocks with not more than one Event Block per Day and no more than 2 weekend Days (Sunday or Saturday) per calendar month.

8.0 At the end of Section 7.6, titled “**City Reserved Events Conflict Consultation**” add the following sentence to the section:

If, however, the Owner and Operator are unable to agree on a resolution of such conflict, the decision of the Operator shall be controlling.

9.0 After Section 9.0, titled “**USE OF DAP BY NORTH CAROLINA CENTRAL UNIVERSITY (NCCU)**” add the following new section:

9.1 NCCU Schedule Priority. The Operator shall give NCCU priority use of the DAP facility for the scheduling of NCCU games over all other Events scheduled by the Operator except for Exempt City Reserved Events.

10.0 In Section 10.4, titled “**Annual Independent Audit**” in the first sentence, delete “120 days” and replace with “180 days.”

97
98 **11.0** In Section 10.6, titled “**Distribution of Operating Profit to City**” in the first
99 sentence, delete “within 30 days” and replace with “within 60 days.”

100
101 **12.0** In Section 23.3, titled “**Turnover of DAP to Operator**” after the last sentence add
102 the following new paragraph:
103

104 Such Acceptance Date Certification is subject to the concurrence of
105 Operator to the extent provided in Section 23.3.1. The Acceptance Date
106 Certification will include a representation and warranty by the City that
107 the provisions of Section 23.3.1 have been met. Operator shall have the
108 responsibility for operation and maintenance of the DAP as provided in
109 this Agreement as of the Acceptance Date and thereafter until the end of
110 the Term. To the extent that Operator occupies portions of the DAP prior
111 to the Acceptance Date, provisions of this Agreement pertaining to
112 Operator’s obligations for Repairs and Maintenance shall commence as it
113 relates to the portion of the DAP occupied by Operator. During the
114 turnover process, Operator shall (i) review the DAP punchlist with the
115 City to see that the punchlist is complete, (ii) perform an inspection of the
116 DAP, within seven (7) Business Days of the date on which the DAP is
117 made available for inspection, to ensure compliance with the punchlist
118 including any additional items identified by Operator in (i) above, and (iii)
119 provide written notice to the City, within five (5) Business Days of
120 inspection, of any and all construction defects which Operator should
121 reasonably have been able to identify. In no event shall the
122 responsibilities of Operator include the obligation to repair, or otherwise
123 maintain, the structural integrity of the DAP or other matters relating to
124 construction defects (other than in relation to the services provided by
125 Operator pursuant to the Agreement referred to in section 15.1). Operator
126 shall be required to meet the Operating Standards with respect to any
127 partial occupancy of the DAP by Operator from the time that the Operator
128 takes occupancy thereof.
129

130 **13.0** After Section 23.3, title “**Turnover of DAP to Operator**” add the following new
131 Section 23.3.1:
132

133 **23.3.1 Issuance of Acceptance Date Certificate.** For purposes of this
134 Agreement, the Acceptance Date that is specified by the City in the
135 Acceptance Date Certification shall be the date upon which all of
136 Operator’s obligations under this Agreement commence if the Acceptance
137 Date specified by City in the Acceptance Date Certification is concurred
138 in by Operator, provided that, unless City consents explicitly otherwise,
139 Operator shall concur with the Acceptance Date that is specified by City in
140 the Acceptance Date Certification when the following events (i) — (v)
141 occur:

(i) the DAP has been constructed substantially in compliance with the Plans and Specifications, including subsequent field modifications made by the contractor at the request of MiLB;

(ii) all building systems provided for in the Plans and Specifications are operational;

(iii) the City has provided all "Owner-Provided FF&E" identified in "Exhibit A, Revised 06/05/2009" that the City is required to provide pursuant to Section 15.8;

(iv) the City has corrected or caused the correction of all construction or Legal Requirement defects of which the City has been notified by the Operator pursuant to Section 23.3.1, (provided that this subsection (iv) applies only to the extent that (a) correction of those construction defects is the responsibility of the City or Persons (other than Operator) with whom the City has a contract and (b) those construction or Legal Requirements defects interfere with the functional or legal use for the purpose for which the defective item, thing, component, or structure is intended); and

(v) the DAP playing field has been reviewed by an independent, qualified playing field inspector for compliance with the Plans and Specifications, including subsequent field modifications made by the contractor at the request of MiLB, and approved for acceptance by both Parties.

The Acceptance Date Certification shall take the form of Exhibit F, attached hereto and to be executed by both Parties.

14.0 In Sections 23.4, titled "**City Access and Right to Repair City Utilities**" after the end of the first and only sentence add the following:

Notwithstanding the obligations of the Parties under Section 15.0 regarding repair, maintenance and improvements to the DAP Real Property, the Operator acknowledges the existence of certain city owned or controlled stormwater and sanitary sewer utilities that run underneath or near the DAP Real Property, including the playing field. Owner shall have access to city owned or controlled utilities as necessary to conduct required sampling, maintenance, repair or even replacement of such utilities (hereinafter, "Utility Work"). Owner shall provide reasonable notice to Operator of such Utility Work, and Owner shall cooperate with Operator to the extent practicable to avoid conflicts with scheduled events or programs unless the Owner is responding to an emergency. If Owner causes any damage to the DAP Real Property as a result of performing any Utility Work, Owner shall be responsible for restoring any damaged property to as close to its original condition as reasonably feasible and within a reasonable time, based upon availability of replacement materials. Any cost or expense associated with Owner related Utility Work shall be borne by the Owner and not considered an Expense.

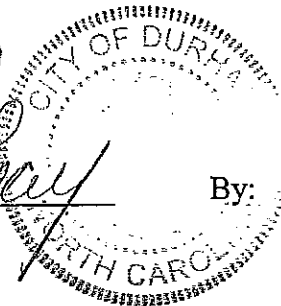
Amendment to DAP Operating Agreement by and between the
City of Durham, North Carolina and MiLB Management, LLC

15.0 Effect of Amendment. The terms of the Original Contract not added to, amended or altered by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties and the Guarantors have caused this Agreement to be executed themselves or by their respective duly authorized agents or officers.

ATTEST:

D. Ann Gray
Clerk



CITY OF DURHAM

By: Thomas Ruffell
City Manager

ATTEST

Secretary

(Affix corporate seal.)

MiLB MANAGEMENT, LLC

By: Pat O'Conner, President
Pat O'Conner, President
National Association of Professional
Baseball Leagues, Inc.

(sole member and manager of MiLB Management, LLC)

NORTH CAROLINA

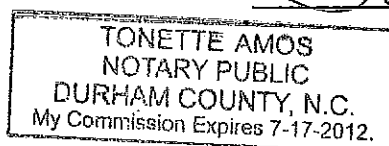
ACKNOWLEDGMENT BY CITY OF DURHAM

COUNTY of Durham

I, a Notary Public in and for the aforesaid County and State certify that
D. Ann Gray personally appeared before me this
day, and acknowledged that he or she is the _____ City Clerk of the City of
Durham, a municipal corporation, and that by authority duly given and as the act of the
City, the foregoing Amendment was signed in its corporate name by its _____
City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy
City Clerk. This the 30th day of October, 2009.

Tonette Amos
Notary Public

My commission expires:



This instrument has been preaudited in the
manner required by the Local Government
Budget and Fiscal Control Act. 10/26/09

FINANCE OFFICER DATE

*Amendment to DAP Operating Agreement by and between the
City of Durham, North Carolina and MiLB Management, LLC*

State of Florida

ACKNOWLEDGMENT BY
MiLB MANAGEMENT, LLC

County of Pinellas

I, a notary public in and for said county and state, certify that PAT O'CONNER, in his capacity as President of the National Association of Professional Baseball Leagues, Inc., a non profit corporation organized under the laws of the State of Florida, personally (1) appeared before me this day, (2) stated that the National Association of Professional Baseball Leagues, Inc. is the sole member and manager of MiLB MANAGEMENT, LLC, a non-profit subsidiary limited liability company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing Amendment with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution of the Amendment on behalf of the company. This the 8th day of September, 2009.

My commission expires:
8-1-2013

Sandra M. Hebert
Notary Public

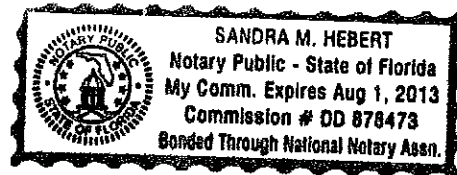


EXHIBIT A
Revised 06/05/2009

OWNER-PROVIDED FF&E

1. Terra Plass or similar field protection system. This will cover at least 2,000 square feet of the playing field for events and concert use based on availability. Scheduling will be first come first serve except City Reserved Events and North Carolina Central University Baseball Schedule. Storage of the 2,000 square feet will be in the same location as the remaining 68,000 square feet.
2. 26 lockers and 26 locker room chairs for visiting and home clubhouses
3. 3 lockers and 3 locker room chairs for the training/coaches room.
4. 4 lockers and 4 chairs for umpire's clubhouse.
5. 5 concessions counters.
6. 1st and 3rd base foul line bullpens: pitching mound and home plate set up, benches in dugout and netting behind home plate
7. Broadcasting booth's existing elements (nothing additional provided). No broadcasting equipment.
8. Chain link outfield and perimeter fence.

Acceptance Date Certification

Reference is hereby made to the Operating Agreement (the "Agreement") titled "DAP Operating Agreement by and between the City of Durham, North Carolina and MiLB Management, LLC," dated December 31, 2007, entered into between the City of Durham ("City") and MiLB MANAGEMENT, LLC, a North Carolina nonprofit subsidiary limited liability company ("Operator"). Terms not defined herein shall have the meaning ascribed to it in the Agreement, as amended. Section references are to sections in the Agreement.

In accordance with the provisions of the Agreement, the City represents and warrants as follows:

- (i) the DAP has been constructed substantially in compliance with the Plans and Specifications, including subsequent field modifications made by the contractor at the request of MiLB;
- (ii) all building systems provided for in the Plans and Specifications are operational;
- (iii) the City has provided all "Owner-Provided FF&E" identified in "Exhibit A Revised 06/05/09" that the City is required to provide pursuant to Section 15.8;
- (iv) the City has corrected or caused the correction of all construction or Legal Requirement defects, if any, of which the City has been notified by the Operator, (provided that this subsection (iv) applies only to the extent that (a) correction of those construction defects is the responsibility of the City or Persons (other than Operator) with whom the City has a contract and (b) those construction or Legal Requirements defects interfere with the functional or legal use for the purpose for which the defective item, thing, component, or structure is intended); and
- (v) the DAP playing field has been reviewed by an independent, qualified playing field inspector for compliance with the Plans and Specifications, including subsequent field modifications made by the contractor at the request of MiLB, and approved for acceptance by both Parties.
- (vi) for purposes of the Agreement, the Acceptance Date is **August 1, 2009**.
- (vii) City has shared with the Operator the outstanding architectural punch list items not considered construction or Legal Requirement defects (which are identified above in paragraph (iv)). City represents to the Operator that City will pursue completion of said architectural punch list items pursuant to the City's contract with the DAP contractor and architect.

Operator concurs in the Acceptance Date and the conditions of certification stated above.

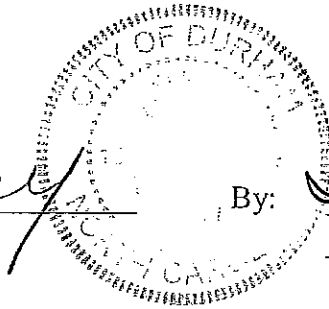
The representations and warranties made by the City herein shall survive the Acceptance Date.

IN WITNESS WHEREOF, this Acceptance Date Certification is made by the City as of this 30th day of October 2009.

ATTEST:

By: CITY OF DURHAM

[Signature]
Clerk



By:

[Signature]
City Manager

ATTEST

By: MiLB MANAGEMENT, LLC

Secretary

By:

[Signature]
Pat O'Conner, President

Pat O'Conner, President
National Association of Professional
Baseball Leagues, Inc.

(Affix corporate seal.)

(sole member and manager of MiLB Management, LLC)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature] 1026-01
FINANCE OFFICER DATE

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT BY CITY OF DURHAM

COUNTY of Durham

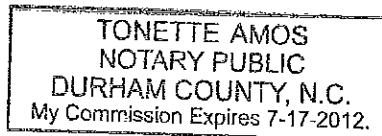
I, a Notary Public in and for the aforesaid County and State certify that

D. Ann Gray personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Amendment was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the 30th day of October, 2009

Tonette Amos

Notary Public

My commission expires:



State of Florida

ACKNOWLEDGMENT BY
MiLB MANAGEMENT, LLC

County of Pinellas

I, a notary public in and for said county and state, certify that PAT O'CONNER, in his capacity as President of the National Association of Professional Baseball Leagues, Inc., a non profit corporation organized under the laws of the State of Florida, personally (1) appeared before me this day, (2) stated that the National Association of Professional Baseball Leagues, Inc. is the sole member and manager of MiLB MANAGEMENT, LLC, a non-profit subsidiary limited liability company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing Amendment with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution of the Amendment on behalf of the company. This the 8th day of September, 2009.

My commission expires:

8-1-2013

Sandra M. Hebert
Notary Public

